

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHERRY JO WILDERMAN

Claimant

VS.

ALL STAR FIREWORKS

Respondent

AND

COMMERCIAL UNION INSURANCE COMPANY

Insurance Carrier

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Docket No. 258,868

ORDER

Claimant appealed the March 4, 2002 Award entered by Administrative Law Judge Steven J. Howard. The Board placed this claim on its summary calendar.

APPEARANCES

Timothy A. Short of Pittsburg, Kansas, appeared for claimant. M. Doug Bell of Coffeyville, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. The record also includes the September 13, 2001 report from Dr. David King, who was selected by the Judge to perform an independent medical evaluation.

ISSUES

This is a claim for a June 19, 2000 suspected spider bite to the left wrist. In the March 4, 2002 Award, Judge Howard determined claimant failed to prove that she was bitten at work and, accordingly, denied claimant's request for benefits.

Claimant contends Judge Howard erred. Claimant argues she began feeling ill after arriving home from work on June 19, 2000, and that she did nothing at home that would

have placed her at risk of an insect or spider bite. Accordingly, claimant argues the suspected insect or spider bite must have occurred at work. Claimant also argues that she provided respondent with timely notice of the accidental injury. In addition, claimant challenges K.S.A. 44-520 (Furse 1993), the notice statute, as being unconstitutional and wishes to preserve that issue for the appellate courts.¹ Claimant requests the Board to award her medical benefits for the suspected insect or spider bite, 14.57 weeks of temporary total disability benefits and permanent disability benefits for a 13 percent functional impairment to the left forearm.

Conversely, respondent and its insurance carrier contend the Award denying benefits should be affirmed. They argue claimant failed to prove that she was bitten by an insect or spider at work, failed to prove she provided timely notice of the injury to respondent, and failed to prove that she was taken off work by a physician during any of those weeks that she is seeking temporary total disability benefits.

The issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury?
3. If so, did claimant prove that she was temporarily and totally disabled for the 14.57 weeks in question?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award should be affirmed. The Board agrees with the analysis of the evidence as set forth in the Award and adopts the Judge's findings, conclusions and orders as its own. In short, claimant is unaware when the suspected insect or spider bite occurred. Claimant can only speculate that she received an insect or spider bite at work. The fireworks that claimant was handling at work had been previously fumigated, as was respondent's facility. Claimant did not see any spiders while working on June 19, 2000, and did not notice any left wrist symptoms until the next morning. The Board concludes that claimant has failed to prove that she sustained injury while working for respondent, which renders the other issues moot.

¹ Claimant acknowledges that the Board does not have jurisdiction to decide that constitutional issue and merely wishes to preserve it for purposes of appeal.

AWARD

WHEREFORE, the Board affirms the March 4, 2002 Award entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy A. Short, Attorney for Claimant
M. Doug Bell, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Workers Compensation Director